

CITIES SERVICE OIL & GAS CORP.

IBLA 87-629

Decided September 14, 1988

An appeal from a decision of the Assistant Director, Program Review, Minerals Management Service, affirming a Royalty Management Program assessment of late payment interest on retroactive lump-sum royalty payments made by Cities Service Oil & Gas Corporation.

Affirmed.

1. Oil and Gas Leases: Royalties--Payments: Generally

30 CFR 218.54 authorizes the Minerals Management Service assessment of a late payment interest charge if royalty payments for oil and gas leases are unpaid or underpaid on the date the amounts are due. The imposition of late payment charges is appropriate to compensate the Government for the loss of the time value of funds due but not paid.

APPEARANCES: Patricia A. Patten, Esq., Cities Service Oil & Gas Corporation, Tulsa, Oklahoma; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Cities Service Oil & Gas Corporation (Cities Service) has appealed from a decision of the Assistant Director, Program Review, Minerals Management Service (MMS), affirming a determination of the MMS Royalty Management Program assessing late payment interest in the amount of \$78,428.80 for late payment of royalties.

The record shows that on March 10, 1986, Cities Service received \$6 million from Northern Natural Gas Company (Northern) as additional payment for gas produced and sold from Outer Continental Shelf leases. This payment was made in settlement of a dispute between Cities Service and Northern regarding the amount owing Cities Service for gas sold to Northern in 1985, pursuant to a Gas Purchase Contract dated July 16, 1979. Cities Service then submitted payment of royalties based upon the amount submitted by Northern in settlement of the dispute.

MMS subsequently levied a late payment interest assessment for the royalties submitted by Cities Service. The assessment amounts and basis for calculation was set forth on MMS invoice No. 0700112, dated January 7,

1987. A decision setting forth the reason for the assessment and advising Cities Service of its right of appeal was sent to Cities Service with the invoice. The decision stated that the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. | 1701 (1982), and MMS regulations at 30 CFR 218.54 and 218.102 authorize MMS imposition of interest assessments for failure to make timely payment of royalties.

Cities Service then appealed the Royalty Management Program assessment of royalties to the Director, MMS, pursuant to 30 CFR Part 290. On appeal Cities Service did not challenge the calculation of the amount assessed, but argued that the levy of the assessment was not proper. The reasons for appeal have been restated in the appeal to this Board and are discussed below.

On April 23, 1987, the Assistant Director, Program Review, MMS, issued a decision denying the Cities Service appeal. In his decision, he stated that it was the policy of the U.S. Government to assess a late payment charge on all debts not received by the due date, and that the charges for late payment are intended to compensate for the replacement cost of fluid funds due, but not paid in a timely manner. He noted that the FOGRMA, 30 U.S.C. | 1701, and Departmental regulations at 30 CFR || 218.54 and 218.102, authorize assessment for failure to make timely payment of royalties due. The payment of royalties is administered by MMS.

In direct response to the argument advanced by Cities Service that the royalties had been properly remitted in a timely manner, the decision cited the provision contained in Appendix B.4.1 of the MMS Payor Handbook, February 1982

[t]hat a late payment charge will be assessed for adjustments of a line item which was previously reported at an incorrect price or as an incorrect quantity. The problem that a lessee may have in obtaining correct production reports (and payments) from its customer is not a burden that can be transferred to the Government, nor does it justify deferral of payment of a portion of the royalties beyond the established due date."
[Emphasis in original.]

(Decision at 2-3).

The Assistant Director determined that the Royalty Management Program correctly determined that late-payment interest should be assessed for the period between the time the royalties were due and owing and the time of appellant's retroactive lump-sum royalty payment. Cities Service has appealed this decision, and the case is now properly before this Board. 1/

1/ Cities Service filed a statement of reasons and incorporated its statement of reasons on appeal to MMS as a part of its supplemental statement of reasons filed on June 26, 1987. It also filed a response to the MMS answer. In its notice of appeal appellant requested an opportunity to

In its statement of reasons, Cities Service asserts that the royalty payment was not "late," stating:

This sum attributable to production for the year 1985 is the settlement of a dispute among the parties over the price of gas pursuant to the Sales Contract (attached as Exhibit "A") and was a benefit achieved on behalf of both the Lessor and Lessee. Cities Service received this check on March 10, 1986, and promptly paid royalties therefor.

It contends that the MMS assessment of late payment charges "is contrary to MMS's contemporaneous interpretation of 30 CFR 218.54, rendered at the time this regulation was promulgated (Statement of Reasons at 2). The pertinent part of this regulation provides that "[a]n interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due." 30 CFR 218.54(a). In support of its contention, appellant notes that when addressing the proposed regulation

one commentator suggested that the interest not be assessed on late payment or underpayments when they are not the fault of the lessee. In response to this pointed comment, the MMS stated:

MMS agrees, If a late payment or underpayment is not the fault or [sic] the lessee in the judgement of MMS, assessment of interest will be waived.

(Statement of Reasons at 2). Cities Service argues that this statement in the preamble to the regulations (49 FR 37336, 340) should be applied when determining the meaning of the regulation, and cited cases in support of this contention.

MMS has answered, stating that:

There is no question that Cities' royalty payments were late and that the MMS has authority to assess interest for these late payments. Cities does not dispute MMS's authority to assess late payment charges. See 30 C.F.R. || 218.54 and 218.150 which set out MMS's authority to assess late payment charges. The purpose of late payment charges is to reimburse the United States for the loss of the time value of its money.

(MMS Response at 2).

MMS asserts that it does waive late payment charges in certain instances and gives examples of those instances in which late payment

fn 1. (continued)

present oral argument. After considering the record and the written arguments filed by the parties we have deemed it unnecessary to grant this request.

charges have been waived. ^{2/} It contends, however, that this case does not present circumstances justifying waiver of late payment charges, stating that:

It is the responsibility of lessees to report and pay accurately and timely. See 30 C.F.R. || 218.50, 218.54, and 218.150. In MMS's judgment, Cities cannot escape this duty because it could not obtain the proper payment from its purchaser. Cities did not timely pay its royalties. This particular failure was not one which was outside the control of the lessee. Therefore, Cities is responsible for late payment charges.

(MMS Response at 3).

MMS disagrees with the Cities Service contention that the assessment of late payment charges violates Congress' intent. Citing the legislative history of the Act, MMS maintains interest is due if timely payments are not made. It states: "Congress did not intend to excuse a lessee from timely payment of royalties simply because the lessee is unable to obtain proper payment from its purchaser. Royalties are due on the value of production in accordance with the lease terms and regulations" (MMS Response at 4).

Appellant has countered this argument in its reply brief, stating that the dispute came about as a result of the deregulation of gas. It argues that the MMS position imposes a duty of strict liability on Cities Service and argues that it was not the intent of Congress to hold a lessee responsible for assessment of interest if late payment or underpayment is not the fault of the lessee. It states:

Obviously, the concern of Congress was to establish a late payment as a penalty so that lessees would not have the incentive to hold the proceeds for any length of time beyond that permitted by the lease or statute, and gain a time value of that money. In this instance, because Cities Service had not collected the amount that it felt was due and owing to it under the Gas Sales Contract, Cities Service had no use of the money and could not "hold the money owed and invest it rather than pay it on time to the MMS.

Because of Cities Service's 5/6 interest in the Oil and Gas Lease, it would have been in a much better financial position had it received the 5/6 interest of the disputed amount attributable to gas sales under the contract, rather than attempt to extract a fictitious interest amount from a 1/6 royalty share.

(Appellant's Reply Brief at 4).

^{2/} Those instances included lessee's inability to collect moneys due until the conclusion of administrative proceedings and when a unit is formed but not immediately approved by the Bureau of Land Management (BLM). In the latter example, MMS deems the moneys not due until BLM approves the unit, thereby attributing production to a Federal lease.

[1] The regulation dealing with payment of royalties for oil and gas leases, 30 CFR 218.50(a), provides in pertinent part: "Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold * * *." In addition, MMS asserts and appellant does not deny that the standard Federal offshore lease form similarly sets out the time that royalties are due as follows: "When paid in value, royalties on production shall be due and payable monthly on the last day of the month next following the month in which the production is obtained."

Under 30 CFR 218.54, which governs late payments and underpayment, an interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due. The language of this regulation is clear. It is the responsibility of the lessee to report and fully pay all royalties timely. Since Cities Service did not pay its royalties as required by its lease and within the meaning of the regulations, MMS properly assessed interest as a late charge.

The Board has repeatedly recognized that the imposition of late payment charges is appropriate to compensate for the loss of use of funds due but not paid. 3/ Amoco Production Co., 78 IBLA 93, 100 (1983). See also Cypress Western Coal Co., 103 IBLA 218 (1988), and Peabody Coal Co., 72 IBLA 337, 348 (1983), where the Board upheld the imposition of late charges on coal leases under similar regulations. Appellant's arguments on appeal do not persuade us that either Congress or the MMS intended that, when royalty amounts owing are not paid pending resolution of a dispute between a lessor and the purchaser of the product, an interest assessment should not be imposed pursuant to 30 CFR 218.54(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

3/ A similar provision for assessment of interest for late payments is found in Article XIV of the July 16, 1979, Gas Purchase Contract between Cities Service and Northern. We must therefore assume that the negotiated settlement between Cities Service and Northern provided for a waiver of the interest charges that Cities Service could have imposed pursuant to that agreement. Had interest been collected by Cities Service, it would have received interest on its 5/6 as well as the 1/6 owing to the MMS.